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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,394	01/05/2004	Robert B. Tepperman	205236-9007	2644

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EXAMINER
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TOMPKINS, ALISSA JILL

ART UNIT	PAPER NUMBER
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3765

MAIL DATE	DELIVERY MODE
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08/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/751,394	Applicant(s) TEPPERMAN, ROBERT B.	
	Examiner Alissa J. Tompkins	Art Unit 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/5/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/21/2007 has been entered.

No claims have been amended or cancelled. Claims 12-31 are currently pending. The 37 C.F.R. 1.132 Affidavit filed on 8/21/2007 has been considered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, and 15-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lathan. Lathan discloses an outer protective garment 10 comprising a torso covering assembly 12 having two-arm covering assemblies 14 and a pants assembly 22

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having two leg covering assemblies 28. The torso covering assembly has head 16, waist 43, and wrist openings 18, which include elastic material to provide the wearer with a snugly fitted garment (Column 5, 45-63). The torso covering assembly is capable of being worn as a jacket. The pants assembly can be connected to the torso assembly and includes an elastic ankle-encompassing assembly 24 (Column 5; 64-67; Column 6, 1-4)(Figures 1 and 2). A rip cord 54 includes a grasp ring 55 that is used to close and/or remove the garment (Column 6, 47-58)(Figures 5 and 6). The garment is made of a thin thermoplastic material made of polyethylene (Column 7, 2-3). The thin material allows the garment to be capable of being folded or rolled up for insertion into a pouch/fanny pack.

However, Lathan is missing a garment that is perforated. Although Lathan's garment does not show perforations for the removal means 54, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use perforations in combination with the rip cord disclosed in order to help facilitate the removal function and to provide a comfortable garment that is fast and easy for the wearer to take off. Lathan's garment is made out of a thin thermoplastic material made with polyethylene.

As for claims 16-20, and 22-31, although Lathan does not state the method for using the disposable outerwear, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the outerwear as claimed in order to provide disposable outerwear to protect athletes during extended length activities.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lathan in view of Tisdale et al. (U.S. 5,774,892). Lathan discloses the invention substantially as applied in claims 1-12 and 15-20 above. However, Lathan is missing perforations that encircle the arms and legs providing a variable length jacket and a short-legged pant. Tisdale shows convertible clothing comprising a shirt and pants. The shirt 2 has detachable lower sleeve portions 4 allowing the long sleeved shirt to be converted to a short sleeve shirt. The pants 6 have detachable lower leg portions 8 allowing the pants to be converted into shorts. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Tisdale to modify Lathan in order to provide convertible clothing having removably attached sleeves and leg portions whereby the attachment means are easily concealed.

### ***Response to Arguments***

The affidavit under 37 CFR 1.132 filed 8/21/2007 is insufficient to overcome the rejection of claims 12-31 based upon 35 USC 103 (a) rejections as set forth in the last Office action because:

Applicant submits that the Disposable Outerwear claimed in the present application has attained commercial success, thereby making the claimed invention nonobvious in view of the prior art. After reviewing the 37 CFR 1.132 affidavit, the Examiner has upheld the previous 103(a) rejection. It is noted by the Examiner that no claim amendments or substantial arguments were submitted. The affidavit was

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reviewed, but was not considered to be persuasive in overcoming the 103(a) rejections. Lathan discloses a garment having a jacket and pants provided with quick removal means. The device of Lathan and Tisdale is capable of performing in the manner recited by the applicant and is therefore interpreted to meet the limitations in the claims.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alissa Tompkins  
Patent Examiner  
Art Unit 3765  
August 27, 2007

AJT

  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700